

Decision 03-04-051 April 17, 2003

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of the City of
Richmond for an Order Preserving the Wigwag
Warning Devices at the Richmond Avenue
Crossing in the City of Richmond, Contra Costa
County, California.

Application 02-05-065
(Filed May 31, 2002)

ORDER EXTENDING STATUTORY DEADLINE

Summary

Pub. Util. Code § 1701.2(d) provides that adjudicatory cases shall be resolved within 12 months of initiation unless the Commission makes findings why that deadline cannot be met and issues an order extending that deadline. In this proceeding, the 12-month deadline for resolving this matter is May 31, 2003. This decision extends the deadline to accommodate issuance of the presiding officer's decision (POD) and consideration of any ensuing appeal or request for review.

Procedural Background

The City of Richmond (City) filed this application on May 31, 2002, seeking an order preserving the wigwag warning devices at the Richmond Avenue crossing and preventing the Burlington Northern Santa Fe Railroad Company (BNSF) from doing further work at the crossing that would result in the removal of the wigwags. The assigned Commissioner and administrative law judge (ALJ) held a prehearing conference (PHC) on September 11, 2002, at which a schedule for this proceeding was developed. The

Evidentiary Hearing (EH) was held as scheduled on December 12 and 13, 2002. At the request of the parties, the schedule for submission of briefs was set to run from the date of mailing of the transcript of the EH. Pursuant to that schedule, the parties filed their final briefs and this matter was submitted on February 13, 2003.

On March 14, 2003, BNSF filed a Motion to Extend Statutory Deadline, on the grounds that the schedule requested by the parties would cause the time for resolution of this matter to extend beyond the 12-month period. The City has not objected to the motion.

Discussion

The presiding officer's decision (POD) will be issued prior to the 12-month deadline. It is possible that the POD will become final and this proceeding will be completed timely. However, if either party appeals or a Commissioner requests review of the POD, there will not be sufficient time for adequate review and possible modification of the POD in accordance with the timeframes set out in § 1701.2(d). Additional time would then be necessary for the Commission to render its final decision.

Accordingly, we find that the 12-month deadline for completing this case pursuant to § 1701.2(d) cannot be met, and that an extension in the schedule will be required to allow adequate time to consider potential appeals or requests for review.

Assignment of Proceeding

Michael R. Peevey is the Assigned Commissioner and Anne E. Simon is the assigned Presiding Officer in this proceeding.

Waiver of Public Review and Comment

Under Rule 77.7(f)(4) of the Commission's Rules of Practice and Procedure, the Commission may reduce or waive the period for public review and comment of draft decisions extending the deadline for resolving adjudicatory proceedings. Accordingly, pursuant to Rule 77.7(f)(4), the otherwise applicable Pub. Util. Code § 1701.2(d) statutory deadline for public review and comment is being waived.

Findings of Fact

1. This proceeding was initiated on May 31, 2002.
2. Based upon the 12-month statutory deadline, this proceeding should be resolved on or before May 31, 2003.
3. Although the POD will be issued prior to the 12-month deadline, the current schedule allows insufficient time to resolve this proceeding before the 12-month statutory deadline runs.
4. The Burlington Northern Santa Fe Railroad Company has requested an extension of the statutory deadline, which the applicant, City of Richmond, has not opposed.
5. An extension is necessary to allow time for issuance of the POD and for Commission consideration of any appeal or request for review of the POD.

Conclusion of Law

The 12-month statutory deadline imposed by Pub. Util. Code § 1701.2(d) should be extended, effective immediately.

O R D E R

IT IS ORDERED that the 12-month statutory deadline in this proceeding is extended until further order.

This order is effective today.

Dated April 17, 2003, at San Francisco, California.

MICHAEL R. PEEVEY
President

CARL W. WOOD
LORETTA M. LYNCH
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners